

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SCOTT ROBERT WILCOX,

Plaintiff,

v.

MARK KING, BRIAN FOSTER, and  
RORY THELEN,

Defendants.

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OPINION AND ORDER

12-cv-704-wmc

In a previous order, the court granted plaintiff Scott Robert Wilcox leave to proceed against defendant Mark King on claims for cruel and unusual punishment in violation of the Eighth Amendment and civil battery under Wisconsin common law, as well as against defendants Brian Foster and Rory Thelen on an Eighth Amendment failure to protect claim. (Dkt. #17.)

Before the court is Wilcox's second motion for assistance in recruiting legal counsel. (Dkt. #22.) In deciding whether to appoint counsel, the court must first find that a plaintiff has made a reasonable effort to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such an effort. *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992). To prove that he has made a reasonable effort to find a lawyer, a plaintiff must normally give the court the names and addresses of at least three lawyers that he asked to represent him on the issues on which he has been allowed to proceed and who turned him down. Wilcox has met this requirement. (9/25/12 Mot. for Assistance of Counsel (dkt. #6) (attaching two letters

from attorneys declining to represent him and listing five additional attorneys who were contacted but did not respond).)

The next question is whether Wilcox meets the legal standard for appointment of counsel, in the sense that the legal and factual difficulty of the case exceeds his ability to prosecute it. *Pruitt v. Mote*, 503 F.3d 647, 654, 655 (7th Cir. 2007). In support of his motion, Wilcox states that (1) his imprisonment limits his ability to litigate, (2) he has limited knowledge of the law (including the law surrounding deliberate indifference), and (3) the trial in this case will involve conflicting testimony. (Pl.'s Mot. (dkt. #22).) These reasons are true for all prisoner lawsuits and do not form an adequate basis to assist in recruiting counsel. Moreover, despite his proclaimed lack of knowledge of the law, the materials Wilcox has submitted to the court thus far suggest that he is highly literate and familiar with the legal system; in the realm of pro se prison litigators, he ranks near the top in terms of competence.

Although there is no doubt that a lawyer would be able to help Wilcox, at this stage of the proceedings it is still too early to tell if he lacks the ability to litigate his case. Magistrate Judge Crocker will hold a preliminary pretrial conference in the near future, at which plaintiff will be provided with information about how to use discovery techniques to gather the evidence he needs to prove his claims, as well as copies of this court's procedures for filing or opposing dispositive motions and for calling witnesses. Accordingly, the court will deny plaintiff's second motion for assistance in recruiting counsel. Plaintiff is free to renew his motion at a later time if he feels incapable of representing himself as the case proceeds.

ORDER

IT IS ORDERED that plaintiff Scott Robert Wilcox's motion for assistance in recruitment of counsel (dkt. #22) is DENIED without prejudice to seek assistance again at a later time.

Entered this 13th day of January, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge